

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *In the Matter of Framework for Broadband Internet Service*, Notice of Inquiry,
GN Docket No. 10-127

Thank you Austin, and to your team for your superb work on this item. It is essential that we ask probing questions that enable us to gather the information required to make informed and sensible policy decisions. This Notice of Inquiry sets forth the leading theories about how we can accomplish our shared goals for broadband service in the wake of the D.C. Circuit's *Comcast* decision. It affords all interested parties – industry, public interest groups, public officials, and ordinary Americans – the opportunity to weigh in on the specific legal and policy merits of those proposals. The item succeeds in taking a difficult and combustible topic and presenting it in a way that should produce meaningful and fruitful discourse.

My fear, however, is that there are efforts underway designed to stifle at all costs our ability to engage in reasonable and productive discussion about these pressing issues. Indeed, it appears that we are a long way from a sincere debate on the merits of these proposals. There is, I believe, a great deal of misinformation being disseminated, which is creating misplaced anxiety.

Perhaps most notably, one of the current narratives being put forth is that proceeding with this inquiry – let alone a change in classification – would freeze investment in the networks. This argument, however, is specious. First, notable telecommunications analysts at firms such as Bank of America Merrill Lynch, UBS, and Goldman Sachs have each asserted that the *public* reaction by industry to the Chairman's proposal is overblown. In fact, they believe the current landscape presents a tremendous buying opportunity. As one well-regarded analyst stated:

[T]he FCC's "Third Way" reclassification largely keeps the status quo intact, with key points being: 1) no rate regulation, 2) no unbundling, to require Cable to share its networks, 3) the forbearance is difficult to overturn, 4) no inconsistent state regulation, [(5)] provides no competitive advantage to DBS or Telco vs. Cable and [(6)] Wireless has a similar "Third Way" reclassification, which has not negatively impacted the business model.¹

Second, the public relations campaign being waged by some may itself be the catalyst for doubts about investment. There should be no surprise when the all-out effort to spin the Chairman's proposal as one that entails extensive regulation scares off potential investors. If you yell "The sky is falling!" enough times, people will eventually take cover.

¹ Pull back is a buying opportunity, Cable/Satellite, Bank of America Merrill Lynch (May 6, 2010) (Jessica Reif Cohen).

Third, as noted earlier, wireless voice communications are currently subject to a nearly identical regulatory regime, and that sector, as you know, has flourished. In fact, as some of my colleagues shared at the agenda meeting last month, the level of investment in the wireless sector has been mind-boggling. Investors and companies have poured billions and billions of dollars into an industry subject to Titles II and III. Massive investment has taken place – and continues to take place – under a parallel paradigm.

But I can understand why powerful companies balk at government oversight. They view any government authority as a threat to their unbridled freedom. Indeed, if it were up to them, we would not enact rules; but rather, rely on “voluntary organizations and forums” made up solely of industry personnel to give us advice on how to serve as a backstop for consumers. I suppose one benefit of this model is that I could significantly shorten my workday.

The problem for me, however, is that I truly care about ensuring that everyone has the opportunity to get broadband through our universal service program. I take seriously the threats to our cyber security. I know all too well the challenge the Internet poses to our privacy. I believe strongly that ISP speeds and bills should be transparent. And I am committed to ensuring that people with disabilities have meaningful access to all that broadband has to offer. There is no effort, no matter how well-funded and coordinated, that will undermine my belief in these essential goals.

Today’s NOI is a positive step towards fulfilling some key aspects of the National Broadband Plan, among other things. I intend on working closely with those companies, organizations, and individuals who engage seriously and forthrightly with these difficult issues. By working together, I have no doubt that we can produce an outcome that both continues to foster investment and innovation and serves the American people.

Thank you, Mr. Chairman, for showing great leadership and vision. I am pleased to support this inquiry.